THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P. NO. 11439 of 1998

DATED: 04-07-2007

Between:-

Dr. Md. Jahangir Ali s/o Md. Mahaboob Ali, aged about 42 years, Junior Assistant and 9 others.

..PETITIONERS

And

The State of A.P. represented by its Secretary to the Government, Education (IE) Department, Secretariat buildings, Hyderabad and two others.

..RESPONDENTS

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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O R D E R

The relief sought for in this writ petition is for a Mandamus declaring the memo of the 1st respondent dated 21.3.1998 as arbitrary and illegal and in derogation of the rules in G.O.Ms. No. 302 dated 30.12.1993 and the proceedings of the Joint Director of Intermediate Education, Hyderabad, dated August, 1998 as being null and void and consequently to direct the respondents to consider the cases of the petitioners for appointment as Junior Lecturers in the 10% quota for non-teaching staff from any other service prescribed in G.O.Ms. No. 302, dated 30.12.1993.

Petitioners are all ministerial staff with the Board of Intermediate Education. They are aggrieved by the fact that the benefit of the special rules, notified in G.O.Ms. No. 302, Education (IE) Department dated 30.12.1993 which under category ii(b) prescribes recruitment by transfer from any other service in the Education Department to the extent of 10% of the posts, has not been extended to the ministerial staff working in the Board of Intermediate Education. Petitioners would contend that, while extending the benefit of recruitment by transfer to the non-teaching staff of

the Education Department, the Government should have also included the ministerial staff working in the Board of Intermediate Education for being given the benefit of being considered for recruitment by transfer to the extent of 10% of the posts of Junior Lecturers.

Sri Y. Venkata Sastry, learned counsel for the petitioners, would refer to paragraph-6 of the Memo dated 21.3.1998, whereby the Government, while expressing its view that necessary amendments to Rule 8 (ii) (b) of the Special Rules pertaining to appointment to the posts of Junior Lecturers in Government Junior Colleges by transfer from non-teaching staff of Education Department be issued, held that in the meanwhile appointment of Junior Lecturers in the 10% quota be made by transfer from non-teaching staff of other services in Education Department covering the categories of posts in A.P. Ministerial service working in the Directorate of Intermediate Education.

The grievance of the petitioners herein is that, while the benefit of being considered within this 10% quota for recruitment by transfer as a Junior Lecturer has been extended by this memo dated 21.3.1998 to the ministerial staff employed in the Directorate of Intermediate Education, such benefit has not been extended to the ministerial staff working in the Board of Intermediate Education.

Learned counsel would submit that future avenues of growth of the petitioners herein is severely curtailed both under Rule 8 (ii) (b) of the Special Rules notified in G.O. Ms. No. 302, dated 30.12.1993 and the

Government Memo dated 21.3.1998 and that the petitioners, being similarly placed as the ministerial staff in the Directorate of Intermediate Education, must also be held as being entitled for the benefit of being considered for recruitment by transfer as Junior Lecturers within this 10% quota.

The special rules, notified in G.O.Ms. No. 302 dated 30.12.1993, called the A.P. Intermediate Education Service Special Rules were made in exercise of the powers conferred under the proviso to Article 309 of the Constitution of India. These rules are akin to legislation (*B.S. Yadav and others v. State of Haryana, AIR 1981 SC 561*). As to whether these rules, made under the proviso to Article 309 of the Constitution of India, could have been amended by the memo dated 21.3.1998 itself is not free from doubt and, while the validity of the memo dated 21.3.1998 on this ground may have necessitated examination, the relief sought for by the petitioners herein is not to declare the memo dated 21.3.1998 as ultravires the special rules, but to also include them among the several categories entitled to be appointed as Junior Lecturers, by transfer, within the 10% quota of posts earmarked for non-teaching staff of the Education Department. Petitioners, in effect, seek a Mandamus from this Court to direct the rule making authority to make rules. As has been repeatedly emphasized in numerous judgments, it is not for this Court to issue a Mandamus to the Rule making authority either to make rules or amend the rules made. Consequently, the relief sought for in the writ petition

cannot be granted.

Sri Y.Venkata Sastry, learned counsel for the petitioners, would submit that the petitioners be permitted to submit a representation to the Government seeking amendment of the rules. It is made clear that this order shall not preclude the petitioners herein from availing such other remedies as are available to them in law nor would it disentitle the Government from taking necessary action to amend or modify the rules, if it considers it necessary, in accordance with law.

The writ petition, however, fails and is, accordingly, dismissed. No costs.

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RAMESH RANGANATHAN, J

Dated: 04.07.2007
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